

Ms. Donna Uzzell, Chairman, National Crime Prevention and Privacy Compact Council (Council), called the Council meeting to order at 9:00 a.m. on November 3, 2004, in the Grand Ballroom of the Hyatt Regency Denver in Denver, Colorado.

Mr. Robert Armstrong, State Compact Officer from the Colorado Bureau of Investigation provided opening remarks and welcomed attendees to Denver.

Mr. Todd C. Commodore, FBI's Criminal Justice Information Services (CJIS) Division's Compact Officer, conducted roll call of the Council members. The following Council members, or their proxies, were in attendance.

State Compact Officers:

- Ms. Debbie McKinney, Oklahoma State Bureau of Investigation
(Proxy for Mr. Rusty Featherstone)
- Mr. Paul Heppner, Georgia Bureau of Investigation
- Ms. Julie LeTourneau, Minnesota Bureau of Criminal Apprehension
- Captain Timothy McGrail, Missouri State Highway Patrol
- Lt. John O'Brien, New Jersey Division of State Police
- Mr. Wilbur Rehmann, Montana Department of Justice
- Mr. David Sim, Kansas Bureau of Investigation
- Lt. Laurence Burns, Arizona Department of Public Safety
(Proxy for Mr. Michael Timmerman)
- Ms. Donna Uzzell, Florida Department of Law Enforcement

State/Local Noncriminal Justice Agency Representative:

- Mr. Robert Finlayson III, Georgia Department of Human Resources

State/Local Criminal Justice Agency Representative:

- Ms. Carole Shelton, Maryland Department of Public Safety and Correctional Services

Federal Noncriminal Justice Agency Representative:

- Ms. Lana Adams, Office of Personnel Management
(Proxy for Ms. Kathy Dillaman)

Federal Criminal Justice Agency Representative:

- Mr. Jonathan Frenkel, Department of Homeland Security

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CJIS Advisory Policy Board (APB) Representative:

- Mr. Frank Sleeter, Sun Prairie Police Department, Sun Prairie, Wisconsin

Federal Bureau of Investigation:

- Mr. Jerome Pender, FBI, CJIS Division

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Other meeting attendees introduced themselves and the agency they represented.
(Attachment 1)

In recognition of Mr. Wilbur Rehmann's contribution to the Council and his pending retirement from the Montana Department of Justice, Mr. Jerome Pender, FBI's CJIS Division, presented a letter and certificate from the FBI thanking Mr. Rehmann for

his years of service with the Council. Mr. Paul Heppner, on behalf of the CJIS Advisory Policy Board (APB), commended Mr. Rehmann's efforts and skills in coordinating delicate issues involving the CJIS APB and the Council. Chairman Donna Uzzell presented Mr. Rehmann with a letter on behalf of the Council acknowledging his contributions to the Council and his service as the Council's first Chairman. Chairman Uzzell commended Mr. Rehmann's leadership abilities and how his experience guided the Council during its formative stages and throughout his tenure as Chairman. During that time, twenty-one states ratified the Compact and twelve states executed the Council's Memorandum of Understanding (MOU).

Next, the Council approved the minutes from the May 2004 meeting.

Compact Council Action: Mr. David Sim made a motion to approve the May 2004 minutes. The motion was approved by acclamation.

Due to the vacancy of the Council's Vice-Chairman position, Chairman Uzzell conducted a special election to fill the vacant Council's Vice-Chairman position. She reviewed applicable Sections 7.2, 7.3, and 7.4 of the Bylaws regarding elections and opened the floor for nominations. Mr. Paul Heppner nominated Mr. David Sim. Captain Tim McGrail seconded the nomination. No other nominations were made for Vice-Chairman.

Compact Council Action: Mr. Paul Heppner made a motion to close the nominations for Vice-Chairman. The motion was seconded by Captain Tim McGrail. Mr. Sim won the election by acclamation.

Topic 1 Standards Committee Report on the Establishment of Minimum Standards for Identification Verification of Applicants When Being Fingerprinted

Mr. Scott Phillips, FBI's Council staff, presented information to the Council regarding FBI Council staff's efforts on establishing minimum standards for verifying the identity of applicants when being fingerprinted. (Attachment 2)

Other meeting attendees introduced themselves and the agency they represented. (Attachment 1)

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The FBI's Council staff examined different efforts in the development of biometric-based identification forms, the different models employed by states and agencies for verifying an applicants identity, and the chain of custody issue.

Chairman Uzzell requested the Council members forward their ideas regarding identification verification to her, the FBI's Council staff, or the Standards Committee. The Standards Committee will address this topic in more detail at its next meeting and provide recommendations to the Council for its consideration at the spring 2005 Council meeting.

Chairman Uzzell then announced that Mr. Paul Heppner would be the new chairman of the Standards Committee and thanked him for accepting the position.

Compact Council Action: This topic was accepted as information only.

Topic 2 Standards Committee Report on the Outsourcing Proposed Rule and the

Draft Security and Management Control Standards

Mr. Wilbur Rehmann provided background information regarding the Outsourcing Proposed rule. He explained that at the request of the FBI in April 2002, the Council began examining methods and procedures to permit the outsourcing of noncriminal justice administrative functions involving access to criminal history record information (CHRI).

In May 2004, the Transportation Security Administration (TSA) solicited the Council to publish the Outsourcing rule to authorize their use of third party vendors for the Hazardous Materials (Hazmat) program. The Council agreed to prepare a limited scope rule on TSA's behalf before the November 2004 Council meeting. However, the FBI's Council staff, in consultation with Chairman Uzzell, decided not to proceed with the limited scope rule as the proposed rule was nearing completion. Therefore, the FBI's Council staff incorporated the comments from the May 2004 Council meeting and submitted the Outsourcing rule and the standards to the Federal Register on October 28, 2004, to be published together. (Attachments 3 and 4)

Ms. Barbara Wiles, FBI's Council staff, described the significant changes to the Outsourcing rule since May 2004. The rule now includes only a reference to the CJIS security policy as the specific citations from the CJIS security policy were removed. The FBI's Office of the General Counsel (OGC), as well as the U.S. Department of Justice (DOJ) Office of Legal Policy, provided their comments. The Council's Executive Committee reviewed and approved the changes, Chairman Uzzell signed the rule, and the FBI's Council staff forwarded it to the Federal Register.

Following the day's meeting, the Council met out of session to discuss the status of the Outsourcing rule and how to accommodate TSA's prior request regarding an Interim Final Rule (IFR) and the fact that the CJIS Division had submitted the proposed rule to the Federal Register for publishing. Mr. Commodore reported that he had contacted the DOJ and requested that they hold the final rule in abeyance. To accommodate TSA's needs, the Council decided to publish the rule as an IFR to be effective on the date published (sometime before the end of the 2004 calendar year) so that the entities who need to use the Outsourcing rule may do so.

Compact Council Action: Ms. Carole Shelton made a motion to accept the Outsourcing Proposed Rule and the Draft Security and Management Control Standards with the proposed changes, as an interim final rule with an effective date of December 31, 2004. Mr. Robert Finlayson seconded the motion. Motion carried.

Topic 3 Update on TSA Hazmat Program

Mr. Commodore, FBI Compact Officer, explained that during the May 2004 Council meeting, the Council requested the FBI's Council staff to prepare a limited scope rule for TSA to accommodate their implementation of Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). Following subsequent dialogue between the FBI's Council staff, the Council's Executive Committee, and the Council's

Standards Committee, they decided to publish the Outsourcing rule, which was submitted to the Federal Register. Mr. Commodore further explained that TSA had met the three requirements from the motion that was made at the last Council meeting regarding outsourcing.

Next, Ms. Paula Barron, FBI's Council staff, updated the Council regarding TSA's Hazmat program. She briefed the Council about the American Association of Motor Vehicle Administrators (AAMVA) - USA PATRIOT Act working group. The working group consists of approximately twenty representatives from various state Department of Motor Vehicle (DMV) agencies. AAMVA and TSA work closely to conduct security threat assessments. Ms. Barron serves as the CJIS Division's liaison to the AAMVA - USA PATRIOT Act working group regarding the various initiatives involving the CJIS Division and the Council.

Next, Mr. Rehmann explained his role with TSA and the states. He explained he has examined the business practices of Florida, Georgia, Maryland, Pennsylvania, Montana, Texas, California, New Jersey, and Colorado regarding the Hazmat process. TSA plans to visit as many states as possible before the January 2005 deadline. They intend to visit Tennessee, North Carolina, and Illinois to understand the issues regarding Hazmat endorsements.

Next Ms. Cathy Morrison, TSA, provided an update on the TSA Hazmat Program via a conference call. Ms. Morrison explained that her report would be general as TSA is still in the rule making phase. Ms. Morrison provided the following information regarding the TSA Hazmat Program:

The fee rule has been submitted to the Office of Management and Budget (OMB) and will be sent to the Federal Register for publication.

The process rule is at OMB. TSA is optimistic that OMB will release a published rule by November 12, 2004. If it is not published by that date then TSA will distribute an exemption form from the current regulation detailing the implementation process.

TSA intends to award the collection contract by the end of November 2004. The contractor responsibilities will include collecting drivers' applications, fingerprints, fees, and then transmitting them to TSA. The DMVs and state Homeland Security advisors will provide the necessary details for the states to proceed without delay. Approximately 42% of the states, based on driving population, have indicated that they will be performing application, fingerprinting, and fee collection functions themselves. Approximately 29% of the states have yet to determine their preferences.

TSA anticipates that the initiation fee will not exceed \$50.

TSA is involved in two weekly conference calls with AAMVA. One is a technical conference call and the other is with state representatives from the AAMVA-USA PATRIOT Act working group that discusses policy and/or technical concerns. TSA continues to conduct the state visits and communicates with the states via e-mail.

TSA has updated its Web site with all the components relevant to the Hazmat program.

Chairman Uzzell requested TSA provide the Council with a state by state template of each state's plan for proceeding and provide a list of states that could be surveyed.

Ms. Morrison explained she would provide the information requested, if possible.

Compact Council Action: This topic was accepted as information only.

Topic 4 Discussion of the Revised Footnote in the State National Fingerprint File (NFF) Qualification Requirements

Ms. Barron discussed the NFF qualification requirements and explained that during the May 2004 Council meeting, Mr. Mike Timmerman, State Compact Officer from Arizona, raised a question about a footnote included in the NFF qualification requirement 1(a) pertaining to a technical requirement for the states. At that time, Mr. Timmerman explained that when Arizona's candidate name search from a fingerprint submission results in a potential candidate, then Arizona's system verifies the candidate's fingerprints. When the name search yields no potential candidate(s), then Arizona's system automatically forwards the fingerprints to the CJIS Division for a search of the national fingerprint database without a technical search of its automated fingerprint identification system. Mr. Timmerman requested the Council examine this issue and determine if Arizona's technical search policy met the requirements as described in the NFF qualification requirements footnote. In May 2004, the Council revised the footnote to specify that a technical search of the fingerprints at the state level must be performed prior to submitting the fingerprints to the CJIS Division. In addition, the Council requested that the Standards Committee further examine this state qualification requirement and footnote and provide a recommendation to the Council.

In August 2004, the Standards Committee decided that the suggested revision to the footnote requiring a state technical search should remain as a state NFF qualification requirement. Lt. Larry Burns (proxy for Mr. Timmerman) proposed that the requirement for a state technical search following an unsuccessful candidate search be re-examined. The FBI's Council staff examined different efforts in the development of biometric-based identification forms, the different models employed by states and agencies for verifying an applicants identity, and the chain of custody issue.

Chairman Uzzell requested the Council members forward their ideas regarding identification verification to her, the FBI's Council staff, or the Standards Committee. The Standards Committee will address this topic in more detail at its next meeting and provide recommendations to the Council for its consideration at the spring 2005 Council

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Compact Council Action: Lt. Larry Burns made a motion that the Council address Arizona's concerns and look at changing this qualification. There was no second. Motion failed.

Chairman Uzzell expressed her appreciation to Lieutenant Burns for bringing Arizona's concerns and comments to the Council. She explained that the Council understands the issues facing Arizona and the financial factors involved and will take that into consideration when Arizona begins to participate in the NFF program.

Topic 5 Draft Notice of Approved Methods of Positive Identification for
Noncriminal Justice Purposes

Mr. Phillips provided background information regarding the notice for the Council's accepted methods of positive identification. He explained that as a result of legislation and other federal mandates, numerous questions have surfaced regarding what constitutes the definition of positive identification. The CJIS Division's Assistant Director requested that the Council examine this issue and provide clarification regarding the definition of positive identification as defined in the Compact.

At the May 2004 Council meeting, the Council discussed the definition of positive identification relative to noncriminal justice purposes and fingerprint submissions. In addition, the CJIS Division staff briefed the Council regarding the final report of the National Fingerprint-Based Applicant Check Study (N-FACS). The Council approved the following motions at the May 2004 meeting regarding positive identification:

Motion 1 Ms. Uzzell made a motion that the Council define one method of positive identification based on a submission of ten-rolled fingerprints with verification of identification by a comparison of fingerprints. Mr. Rehmann seconded the motion. The motion carried.

Motion 2 Mr. Rehmann made a motion that the Council accept the Standards Committee's recommendation that ten-flat fingerprints comprise another standard for determining positive identification for noncriminal justice purposes so long as the reliability meets or exceeds the CJIS Division's Integrated Automated Fingerprint Identification System (IAFIS) specifications and there is no degradation of IAFIS services. The motion carried.

Motion 3 Mr. Rehmann made a motion that the Council accept the Standards Committee's recommendation to endorse the near-term implementation (within six months) accompanied by a standard for capture devices as explained in the N-FACS report and that the FBI move forward with implementation as long as there is no degradation to IAFIS services. The motion carried.

The Council endorsed future FBI fingerprint pilots, whereby an acceptable

scientific

reliability may be shown which deviates from the ten-rolled fingerprints and other accepted standards for positive identification. The Council endorsed pilots involving less than ten-rolled fingerprints to be conducted by the CJIS Division in conjunction with the state/agency willing to conduct such pilots. The pilot should produce appropriate statistical and scientific analysis which should be brought before the Council for a discussion of the pilot's merits. Furthermore, the Council concluded that the definition in Article I (20) of the Compact speaks of a "comparison of fingerprints" without specifying how many fingerprint images; therefore, the definition is flexible enough to accommodate any future position the Council may favor concerning using less than ten-rolled or flat fingerprints.

During the May 2004, meeting the Council requested the FBI's Council staff to prepare a draft notice for publication in the Federal Register (Attachment 5) explaining the Council's approved methods of positive identification. In August 2004, the Standards Committee reviewed a first draft of the notice and made suggestions and changes for the FBI's Council staff to incorporate. During discussion of the notice, Chairman Uzzell requested that language explaining which standards and/or specification to be used should be referenced in the notice, as well as a federal and state point of contact. The Council considered the following suggestion for the Summary portion of the notice:

SUMMARY: At its May 2004 meeting, the Compact Council, established by the National Crime Prevention and Privacy Compact (Compact), approved two methods for determining positive identification [defined in Article I (20) of the Compact] for noncriminal justice purposes. For future updates to the Compact Council's list of approved methods of positive identification for noncriminal justice purposes, interested parties should contact the FBI's Compact Council Office. Information regarding a state or federal agency's acceptable standards and technical capabilities to process fingerprints should be obtained from the State Compact Officer in a Compact State, the Chief Administrator of the State Central Repository in a non-Compact State, or the FBI Compact Officer.

The Council agreed to the following change on page 4 of the notice:

"nor shall it degrade the search accuracy and/or computing capacity of the FBI's CJIS Division's Integrated Automated Fingerprint Identification System (IAFIS) as determined by the FBI CJIS."

The Council agreed to the following addition on page 4 of the notice:

Future alternatives for determining positive identification of criminal history record checks must be coordinated with the FBI's CJIS Division, and the scientific reliability should not significantly deviate from the reliability of ten-rolled fingerprints, ten-flat fingerprints, and other Compact Council accepted methods for positive identification for noncriminal justice purposes.

Compact Council Action: Lt. Larry Burns made a motion that the Council address Arizona's concerns and look at changing this qualification. There was no second. Motion failed.

Chairman Uzzell expressed her appreciation to Lieutenant Burns for bringing Arizona's concerns and comments to the Council. She explained that the Council understands the issues facing Arizona and the financial factors involved and will take that into consideration when Arizona begins to participate in the NFF program.

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months) accompanied by a standard for capture devices as explained in the N-FACS report and that the FBI move forward with implementation as long as there is no degradation to IAFIS services. The motion carried.

The Council endorsed future FBI fingerprint pilots, whereby an acceptable scientific reliability may be shown which deviates from the ten-rolled fingerprints and other accepted standards for positive identification. The Council endorsed pilots involving less than ten-rolled fingerprints to be conducted by the CJIS Division in conjunction with the state/agency willing to conduct such pilots. The pilot should produce appropriate statistical and scientific analysis which should be brought before the Council for a discussion of the pilot's merits. Furthermore, the Council concluded that the definition in Article I (20) of the Compact speaks of a "comparison of fingerprints" without specifying how many fingerprint images; therefore, the definition is flexible enough to accommodate any future position the Council may favor concerning using less than ten-rolled or flat fingerprints.

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SUMMARY: At its May 2004 meeting, the Compact Council, established by the National Crime Prevention and Privacy Compact (Compact), approved two methods for determining positive identification [defined in Article I (20) of the Compact] for noncriminal justice purposes. For future updates to the Compact Council's list of approved methods of positive identification for noncriminal justice purposes, interested parties should contact the FBI's Compact Council Office. Information regarding a state or federal agency's acceptable standards and technical capabilities to process fingerprints should be obtained from the State Compact Officer in a Compact State, the Chief Administrator of the State Central Repository in a non-Compact State, or the FBI Compact Officer.

The Council agreed to the following change on page 4 of the notice:

"nor shall it degrade the search accuracy and/or computing capacity of the FBI's CJIS Division's Integrated Automated Fingerprint Identification System (IAFIS) as determined by the FBI CJIS."

The Council agreed to the following addition on page 4 of the notice:

Future alternatives for determining positive identification of criminal history record

checks must be coordinated with the FBI's CJIS Division, and the scientific reliability should not significantly deviate from the reliability of ten-rolled fingerprints, ten-flat fingerprints, and other Compact Council accepted methods for positive identification for noncriminal justice purposes.

Mr. Frank Campbell, DOJ, opined that he would like DOJ staff to review the draft notice to determine if it should be published as a rule instead of a notice.

Compact Council Action: Lt. John O'Brien made a motion that the Council approve the Notice of Approved Methods of Positive Identification for Noncriminal Justice Purposes with the proposed changes and publish it as a proposed notice in the Federal Register with a caveat that if the DOJ decides that it should not be published as a notice then the topic will be readdressed at the next Council Meeting. The motion was seconded by Ms. Debbie McKinney. Motion carried.

Topic 6 Two-Print Pilot with Department of State (DOS)

Ms. Tracy Pacoe, CJIS Division staff, and Mr. David Boyd, DOS, presented this topic. (Attachment 6)

Ms. Pacoe explained the CJIS Division's relationship with DOS as a result of the requirements of the USA PATRIOT Act of 2001, which authorized DOS to receive National Crime Information Center (NCIC) and Interstate Identification Index (III) data extracts from the CJIS Division. DOS imports the III and NCIC data into its Consular Lookout and Support System (CLASS), which is the system that DOS uses to conduct initial name checks of visa applicants at embassies and consulates world wide. In addition, she explained that DOS and the CJIS Division intend to conduct a pilot with the San Salvador consulate that will allow the submission of two fingerprints of visa applicants following an initial check of the Department of Homeland Security's Automated Biometric Identification System (IDENT). If the IDENT check results in a "hit", the San Salvador consulate will electronically submit the two-print fingerprint containing the FBI number obtained from IDENT. Then, the CJIS Division will verify the two-print fingerprint submission with the submitted FBI number and respond electronically to the San Salvador consulate. In addition, she summarized the other ten-print fingerprint pilots with DOS' Mexican consulates as follows:

Consulates submit to the CJIS Division using different ten-print scanners to submit ten-flat fingerprints (Cuidad Juarez, Mexico City, Monterrey, and Guadalajara)

Two-print submissions with a quoted FBI Number (San Salvador)

The Council requested additional information regarding the two-print fingerprint pilot with San Salvador. Specifically, the Council requested a time line for completion of the pilot, objectives of the pilot, criteria for evaluation, and an explanation of the CJIS Division and DOS two-print fingerprint pilot process. Chairman Uzzell thanked the DOS personnel for attending the meeting and encouraged attendance at future meetings to discuss the progress of the fingerprint pilots.

Mr. Frank Campbell, DOJ, opined that he would like DOJ staff to review the draft notice to determine if it should be published as a rule instead of a notice.

Compact Council Action: Lt. John O'Brien made a motion that the Council approve the Notice of Approved Methods of Positive Identification for Noncriminal Justice Purposes with the proposed changes and publish it as a proposed notice in the Federal Register with a caveat that if the DOJ decides that it should not be published as a notice then the topic will be readdressed at the next Council Meeting. The motion was seconded by Ms. Debbie McKinney. Motion carried.

Topic 6 Two-Print Pilot with Department of State (DOS)

Ms. Tracy Pacoe, CJIS Division staff, and Mr. David Boyd, DOS, presented this topic. (Attachment 6)

Ms. Pacoe explained the CJIS Division's relationship with DOS as a result of the requirements of the USA PATRIOT Act of 2001, which authorized DOS to receive National Crime Information Center (NCIC) and Interstate Identification Index (III) data extracts from the CJIS Division. DOS imports the III and NCIC data into its Consular Lookout and Support System (CLASS), which is the system that DOS uses to conduct initial name checks of visa applicants at embassies and consulates world wide. In addition, she explained that DOS and the CJIS Division intend to conduct a pilot with the San Salvador consulate that will allow the submission of two fingerprints of visa applicants following an initial check of the Department of Homeland Security's Automated Biometric Identification System (IDENT). If the IDENT check results in a "hit", the San Salvador consulate will electronically submit the two-print fingerprint containing the FBI number obtained from IDENT. Then, the CJIS Division will verify the two-print fingerprint submission with the submitted FBI number and respond electronically to the San Salvador consulate. In addition, she summarized the other ten-print fingerprint pilots with DOS' Mexican consulates as follows:

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Two-print submissions with a quoted FBI Number (San Salvador)

The Council requested additional information regarding the two-print fingerprint pilot with San Salvador. Specifically, the Council requested a time line for completion of the pilot, objectives of the pilot, criteria for evaluation, and an explanation of the CJIS Division and DOS two-print fingerprint pilot process. Chairman Uzzell thanked the DOS personnel for attending the meeting and encouraged attendance at future meetings to discuss the progress of the fingerprint pilots.

Compact Council Action: Mr. Frank Sleeter made a motion to endorse the DOS, Bureau of Consular Affairs Two-Print pilot with the understanding that the specific objectives of the pilot including the evaluation criteria, be provided to the Council at the Spring 2005 Council meeting. The motion was seconded by Mr. Paul Heppner. Motion carried.

Topic 7 User Fee Ad Hoc Committee Report

Lt. Tom Turner, Chairman, User Fee Ad Hoc Committee (Committee), provided an overview of the telephone conference conducted in October 2004. The Committee agreed to study the services provided by states based on the fees collected from applicant fingerprint submissions. The Committee recommended a survey of the states that would focus on its use of fees generated from fingerprint submissions. The National Consortium for Justice Information and Statistics (SEARCH) agreed to assist the Committee with development of the survey and questions. The Committee will review the draft survey questions and request input from the Committee for additional questions before sending the survey to the states in December 2004. The Committee will analyze and evaluate the information provided by the states regarding the fees and provide a report to the Standards Committee and the Council.

Additionally, Mr. Commodore provided clarifying information regarding the FBI's current fingerprint fee. He explained that the processing fee for fingerprints is \$24; however, a \$2 rebate is awarded when a state agrees to be billed directly by the CJIS Division. The CJIS Division plans to send a letter to contributors that explains the fee schedule.

Compact Council Action: This topic was accepted as information only.

Topic 8 Report from National Conference of State Liquor Administrators (NCSLA)

Mr. Commodore explained that the National Conference of State Liquor Administrators (NCSLA) had contacted the CJIS Division about channeling fingerprints on behalf of alcoholic beverage license applicants. Mr. Commodore suggested that the NCSLA address the Council regarding its intentions. Mr. Matt Cook, an officer with NCSLA and director of the State Liquor Enforcement of Colorado, explained that for the past five years, NCSLA has extensively researched the possibility of channeling

fingerprints on behalf of its applicants across the United States. Mr. Cook explained that the NCSLA proposal would allow NCSLA to become a channeler on behalf of alcoholic beverage license applicants who seek licensure in the 27 states that are compliant with Public Law 92-544. NCSLA's proposal calls for an NCSLA officer to submit a single set of fingerprints to NCSLA who would submit the fingerprints to the FBI's CJIS Division on their behalf. Any CHRI would be distributed pursuant to established guidelines.

Mr. Wilbur Rehmann requested clarification of NCSLA's intentions. Mr. Cook explained that NCSLA intended to use the Outsourcing rule as authorization to act as the channeling agency; however, in the absence of an Outsourcing rule, NCSLA may consider approaching Congress to pass legislation on its behalf. Mr. Rehmann explained that the Outsourcing rule will not supercede state laws that require fingerprint-based checks at the state level before a national check. After considerable discussion of the issue, Chairman Uzzell agreed to refer this topic to the User Fee Ad Hoc Committee. Compact Council Action: Mr. Frank Sleeter made a motion to endorse the DOS, Bureau of Consular Affairs Two-Print pilot with the understanding that the specific objectives of the pilot including the evaluation criteria, be provided to the Council at the Spring 2005 Council meeting. The motion was seconded by Mr. Paul Heppner. Motion carried.

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Topic 9 Standards Committee Report on the Update on the FBI Interstate Identification Index (III) System Policy for Criminal Justice Purpose Name Checks (Purpose Code

Compact Council Action: Mr. Jerry Pender made a motion to refer this topic to the User Fee Ad Hoc Committee for educational purposes on both sides, so that NCSLA can be educated on what their issues will be and also so that the Council can understand long-term strategy and what they need to be taking into account on further issues that need to be addressed. Mr. Paul Heppner seconded the motion. Motion carried.

Topic 9 Standards Committee Report on the Update on the FBI Interstate Identification Index (III) System Policy for Criminal Justice Purpose Name Checks (Purpose Code "C") at Federal Office Buildings and Facilities

At the October 2003 Council meeting, the Council discussed the CJIS APB policy allowing III name checks of contractors requiring access to federal facilities. In 1996, the CJIS APB authorized the use of Purpose Code "C", criminal justice purposes, to conduct III background name checks of contractors entering federal facilities. This change in policy was made prior to the Compact Act being passed. The Council's Standards Committee discussed the fact that since the enactment of the Compact Act, the use of Purpose Code "C" to conduct III background checks on contractors entering federal

facilities as authorized by the CJIS APB policy may need to be reconsidered.

The Standards Committee recommended the formation of a committee comprised of representatives of the CJIS APB and the Council to meet with CJIS Division personnel to discuss the CJIS APB approved policy. The newly formed committee will research this topic and related issues and provide potential alternatives that would be acceptable to both the Council and the CJIS APB.

Compact Council Action: Mr. Jerry Pender made a motion that the CJIS Division staff convene an Ad Hoc working committee with the Compact Council and the CJIS APB to define the criteria that should be used to determine if access to III data falls under the administration of criminal justice or noncriminal justice purposes. The motion was seconded by Mr. Frank Sleeter. Motion carried.

Topic 10 Sanctions Committee Report

Ms. Julie LeTourneau, Chairman of the Sanctions Committee, provided an update on the proposed revisions to Title 28, Code of Federal Regulations, Part 905. The Sanctions Committee recommended publishing the Sanctions rule pending the Council's approval.

During the Sanctions Committee meeting on November 2, 2004, the Committee reviewed the recently conducted CHRI audits from eight states based on the proposed Sanctions rule. The Sanctions Committee reviewed the CJIS Audit Unit's (CAU) findings regarding the Compact states and those states that signed a Memorandum of Understanding (MOU) for compliance with the Compact and applicable Council rules. Additionally, the CAU reviewed the NFF states for NFF compliance, as well as other Compact-related compliance issues. Further, the CAU reviewed non-MOU and non-Compact states for compliance with Council rules, which the CJIS Division has adopted for general use. The Sanctions Committee recommended sending letters to the states after a review by Chairman Uzzell. Following CAU's summary of its findings, the Sanctions Committee decided it will report to the Council any serious violations with recommendations on a course of action. Ms. LeTourneau reported that none of the states had any violations that would have required such action. The Sanctions Committee also reviewed the pilot Noncriminal Justice Agency (NCJA) Audits. Since March 2004, the CAU conducted NCJA Audits of 12 states, the American Bankers Association, including six banking institutions, and five Federal channeling agencies. The CAU agreed to provide the Sanctions Committee with the methodology, the findings of the pilot audits, and evaluations for the Sanctions Committee to make recommendations for the Council to consider before proceeding with the audits.

Compact Council Action: Ms. Julie LeTourneau made a motion to approve the publishing of the Sanctions rule as well as publishing the notice of the NFF audit methodology and the sampling standards. The motion was seconded by Lt. John O'Brien.

Motion carried.

Topic 11 Utilizing the Delayed Fingerprint Submission Rule for Federal Emergency Management Agency (FEMA) Criminal History Record Checks

Mr. Danny Moye, FBI OGC, explained

The Sanctions Committee also reviewed the pilot Noncriminal Justice Agency (NCJA) Audits. Since March 2004, the CAU conducted NCJA Audits of 12 states, the American Bankers Association, including six banking institutions, and five Federal channeling agencies. The CAU agreed to provide the Sanctions Committee with the methodology, the findings of the pilot audits, and evaluations for the Sanctions Committee to make recommendations for the Council to consider before proceeding with the audits.

Compact Council Action: Ms. Julie LeTourneau made a motion to approve the publishing of the Sanctions rule as well as publishing the notice of the NFF audit methodology and the sampling standards. The motion was seconded by Lt. John O'Brien. Motion carried.

Topic 11 Utilizing the Delayed Fingerprint Submission Rule for Federal Emergency Management Agency (FEMA) Criminal History Record Checks

Mr. Danny Moye, FBI OGC, explained

that FEMA contacted OGC and explained their need to conduct between 1,000-2,000 background checks of temporary employees to handle natural disasters and emergency situations. Because of the hurricanes in Florida, FEMA needed to hire temporary employees quickly; therefore, they requested the ability to conduct III name-based checks prior to submitting fingerprint-based background checks. Mr. Moye contacted the FBI's Compact Office who contacted the Compact's Executive Committee to explain FEMA's request. The Council's Executive Committee temporarily authorized FEMA's access to III under the scope of the delayed fingerprint submission rule. The CJIS Division established procedures whereby the Federal Protective Service conducted the III name-based check on behalf of FEMA and the fingerprints would be submitted to the CJIS Division by courier on a daily basis, therefore meeting the fifteen day requirement of the rule. Mr. Moye explained that FEMA would be providing a formal request to the Council.

Compact Council Action: Ms. Carole Shelton made a motion to accept the FEMA proposal to utilize the Purpose Code "X" for III Criminal History Record Checks for emergency situations and publish in the form of a notice in the Federal Register. Mr. Robert Finlayson seconded the motion. Motion carried.

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Compact Council Action: Ms. Carole Shelton made a motion to accept the FEMA proposal to utilize the Purpose Code "X" for III Criminal History Record Checks for emergency situations and publish in the form of a notice in the Federal Register. Mr. Robert Finlayson seconded the motion. Motion carried.

Topic 12 Status Update on the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003

Mr. Allen Nash, CJIS Division Staff, provided a status of the PROTECT Act and the pilot program (Attachment 7). In 2003, the President signed into law the PROTECT Act pilot program. The Act requires the U.S. Attorney General to establish a pilot program for volunteer groups to request and obtain state and national fingerprint-based background checks on volunteers. The three organizations participating in the pilot program are the National Mentoring Partnership (NMP), the Boys & Girls Clubs of America (BGCA), and the National Council of Youth Sports (NCYS). The pilot program is scheduled to run from July 29, 2003 to January 31, 2005. The purpose of the pilot program is to evaluate models for conducting criminal history background checks on individuals that work with children, the elderly, and the disabled. The Act consists of two parts, the child safety pilot program and the state pilot program. Three states were initially identified to participate in the state pilot program: Montana, Tennessee, and Virginia. Florida became the fourth participating state as a result of discussions during previous Council meetings and Standards Committee meetings. Florida became a participant to represent the option of disseminating criminal history records to the qualified entity and allowing them to make the fitness determinations. Under the state pilot program, the states are doing the fitness determinations in accordance with their

own procedures. Under the child safety pilot program, the FBI provides the criminal history records to the National Center for Missing and Exploited Children (NCMEC). NCMEC also worked with volunteer organizations to develop fitness criteria.

Mr. Nash provided the following accomplishments of the PROTECT Act:

Manual In-Electronic Out - The FBI is sending electronic responses to fingerprint card submissions received manually.

Paper Check Conversion - Organizations now submit a payment check when they submit the fingerprint card. Then, the CJIS Division electronically submits the check to the U.S. Treasury Department. Once the funds are approved, the CJIS Division proceeds with processing the fingerprint submission.

Electronic Submission of fingerprints via LEO - NMP submits fingerprints via Law Enforcement Online (LEO). The fingerprints are submitted electronically via a dial-up connection. A recent technical upgrade to LEO now allows the fingerprints to be transmitted within seconds as opposed to 15 minutes or more before the upgrade.

Record Challenge Process - The PROTECT Act gives every individual who undergoes a background check the right to request a copy of their record and challenge the accuracy and completeness of the information in that record. Previously the individual had to submit a departmental order, which meant they had to submit a separate fingerprint card and its associated fee. In the letter to the applicant, a transaction number is provided along with forms to request a copy of their criminal history record for themselves, the volunteer organization, or both. Approximately 49 of these requests have been received to date.

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qualified entity and allowing them to make the fitness determinations. Under the state pilot program, the states are doing the fitness determinations in accordance with their own procedures. Under the child safety pilot program, the FBI provides the criminal history records to the National Center for Missing and Exploited Children (NCMEC). NCMEC also worked with volunteer organizations to develop fitness criteria.

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Mr. Nash discussed a survey sent to the volunteer organizations regarding customer expectations. The volunteer organizations sent the survey to their members. The NCYS provided one response, the BGCA provided approximately 60 responses, and NMP provided approximately 400. The CJIS Division provided the data from the survey to the Bureau of Justice Statistics (BJS) for their expert assistance. BJS has prepared a draft copy of the conclusions, but is waiting for the draft copy to be approved prior to disseminating the results. Mr. Nash advised that a preliminary result indicated that for most volunteer organizations the impediments to fingerprint background checks involves not only a financial cost but also accessibility to fingerprinting mechanisms that create problems for volunteer organizations.

Next, Mr. Nash provided information regarding an Ad Hoc study to examine the accuracy of federal records versus state records and public name checks versus fingerprint-based checks. The Ad Hoc study is ongoing and should be finished by January 31, 2005. Another Ad Hoc study regards providing criminal history records to the qualified entity. SEARCH assisted with a survey involving 24 states that indicated

the benefits of disseminating the criminal history information to the qualified entity. In addition, 34 states indicated their preference of having the option of providing criminal history record checks directly to the qualified entities.

Compact Council Action: This topic was accepted as information only.

Topic 13 Discussion on House Bill H.R. 10

Mr. Nash discussed a survey sent to the volunteer organizations regarding customer expectations. The volunteer organizations sent the survey to their members. The NCYS provided one response, the BGCA provided approximately 60 responses, and NMP provided approximately 400. The CJIS Division provided the data from the survey to the Bureau of Justice Statistics (BJS) for their expert assistance. BJS has prepared a draft copy of the conclusions, but is waiting for the draft copy to be approved prior to disseminating the results. Mr. Nash advised that a preliminary result indicated that for most volunteer organizations the impediments to fingerprint background checks involves not only a financial cost but also accessibility to fingerprinting mechanisms that create problems for volunteer organizations.

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Compact Council Action: This topic was accepted as information only.

Topic 13 Discussion on House Bill H.R. 10 "The 9-11 Recommendations Implementation Act"

Chairman Donna Uzzell explained that the H.R. 10 Bill included various legislative issues with at least four that reference CHRI background checks. Section 21-42 of H.R. 10 includes a provision that would require the U.S. Attorney General to establish a pilot program providing employers the ability to request CHRI under applicable state laws authorizing such a request and to provide the CHRI to the employer. Section 21-45 is a provision authorizing the state's Pub. Law 92-544 statutes to be utilized, and when such a statute is absent, the check could be made directly to the FBI. Another section of the bill discusses the establishment of a national clearinghouse for security guard background checks. This clearinghouse would be implemented within one year following the passage of the legislation. Mr. Moye noted that the Compact was not mentioned in the bill as a reference.

Chairman Uzzell contacted the Council's Executive Committee regarding the H.R. 10 Bill and they decided to prepare a written resolution to Congress. However, after

consulting with the DOJ, the Executive Committee agreed that Chairman Uzzell would prepare a letter to Congress representing the state of Florida and indicating its concerns regarding the bill.

Mr. Owen Greenspan, SEARCH, provided a status report of the bill in Congress. He explained as of November 1, 2004, the House and Senate had not reached an agreement regarding the establishment of the National Intelligence Director position. Mr. Robert Holloran, National Background Data, commented that the National Association of Professional Background Screeners and the Consumer Data Industry are lobbying very strongly for the H.R. 10 bill to be passed.

Chairman Uzzell discussed the role of the Council and the Compact Act in providing information to Congress regarding potential legislation that involves or is of interest to the Council. Chairman Uzzell discussed the fact that the Council could serve as a valuable resource to Congressional members as they consider legislation that may in fact fall within the purview of the Council's authority. Mr. Campbell, DOJ, explained that he felt if potential legislation appeared to involve the Compact Act and the Council it seems the bill's sponsor is unaware of it, then the Council may justifiably intervene to assist in educating the lawmakers as they proceed with the work on the potential legislation. Further, Chairman Uzzell felt that creating a Council Web site would assist in providing a Web-based forum to obtain Council and Compact Act information.

Compact Council Action: This topic was accepted as information only.

Topic #14 Legislative Update

Mr. Danny Moye, FBI OGC, presented information regarding federal legislation, both pending and current enacted laws, introduced in the 108th Congress that may impact the CJIS Division and its user community. Mr. Moye advised that any questions regarding the legislative update should be referred to him or Ms. Melody Ferrell, FBI OGC.

Mr. Moye discussed HR 218, which authorizes concealed weapons permits for retired and active law enforcement officers. Mr. Moye mentioned that federal and state agency's concerns with this bill are being examined by the DOJ. One of those concerns is what would happen if the retired officer registered in one state moves to another state (i.e., Would the officer be required to undergo another background check?). Mr. Moye advised that III and NCIC would be the only available databases for these background checks and not the National Instant Criminal Background Check System database.

Next, Mr. Gary Barron, CJIS Division staff, discussed the Medicare Prescription Drug and Modernization Act of 2003. Mr. Barron explained that one provision of this act provides for a pilot program to evaluate national and state background checks on direct patient access employees of long-term care facilities. The responsibility for this pilot belongs to the Secretary of Health and Human Services,

specifically the Center's for Medicare and Medicaid Services (CMM) Department with assistance from the U.S. DOJ. The act permits the federal government to enter into agreements with up to ten states to conduct the pilot program. The act provides 25 million dollars to implement the pilot and produce a Government Accounting Office report of the pilot in 2007.

The CMM conducted several teleconferences with entities within the states to coordinate the pilot and provide information regarding the process. The CMM distributed a solicitation package for participation that provided the requirements for the pilot. The pilots intend to begin by the end of January 2005.

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Compact Council Action: Mr. Paul Heppner made a motion that the Council send out a blanket informational brochure (reviewed and approved by DOJ) to Congressional members to educate them on the Compact and to send personalized letters (reviewed and approved by DOJ) to those who have introduced bills regarding background checks. The motion was seconded by Ms. Carole Shelton. Motion carried.

Topic #15 Status Report on Pending Rules and Notices

Ms. Paula Barron provided a report on the following pending rules and notices.

Record Screening Rule (Attachment 8)

Ms. Barron guided the Council through a review of the comments (shown in highlight/strikeout in the attachment) from the most recent OGC and DOJ review.

Compact Council Action: Mr. David Sim made a motion to revert back to the original language in Section 904.3, State Criminal History Record Screening Standards, of the Records Screening Rule and add "subject to the Compact" after the word "search". The motion was seconded by Ms. Carole Shelton. Motion carried.

The new language will read as follows: The following record screening standards relate to criminal history record information received for noncriminal justice purposes as a result of a national search subject to the Compact utilizing the III system.

Compact Council Action: Mr. Frank Sleeter made a motion to accept and publish the proposed rule for Criminal History Record Screening for Authorized Noncriminal Justice Purposes, including the changes referred to in the above motion regarding Section 904.3. The motion was seconded by Mr. Jerry Pender. Motion carried.

NFF Qualification Requirements Rule and Notice (Attachment 9)

The proposed change for this rule is under Section 905.2 and will provide consistency between language in the rule and that contained in the notice. The following phrase was added, "each NFF program participant will meet the standards set forth in the NFF qualification requirements as established by the Council and endorsed by the FBI's CJIS APB."

Compact Council Action: Ms. Lana Adams made a motion to publish the NFF Qualification Requirements Rule and Notice with one change, the removal of the word "final" from the sentence in the summary section of the notice which will now read, "The Council coordinated the development of the NFF Qualification Requirements with the FBI's CJIS Division staff and forwarded the final document to the CJIS APB for its endorsement prior to publication. The motion was seconded by Mr. Paul Heppner. Motion carried.

Compact Council Action: Mr. Paul Heppner made a motion that the Council send out a blanket informational brochure (reviewed and approved by DOJ) to Congressional members to educate them on the Compact and to send personalized letters (reviewed and approved by DOJ) to those who have introduced bills regarding background checks. The motion was seconded by Ms. Carole Shelton. Motion carried.

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Ms. Paula Barron provided a report on the following pending rules and notices.

Record Screening Rule (Attachment 8)

Ms. Barron guided the Council through a review of the comments (shown in highlight/strikeout in the attachment) from the most recent OGC and DOJ review.

Compact Council Action: Mr. David Sim made a motion to revert back to the original language in Section 904.3, State Criminal History Record Screening Standards, of the Records Screening Rule and add "subject to the Compact" after the word "search". The motion was seconded by Ms. Carole Shelton. Motion carried.

The new language will read as follows: The following record screening standards relate to criminal history record information received for noncriminal justice purposes as a result of a national search subject to the Compact utilizing the III system.

Compact Council Action: Mr. Frank Sleeter made a motion to accept and publish the proposed rule for Criminal History Record Screening for Authorized Noncriminal Justice Purposes, including the changes referred to in the above motion regarding Section 904.3. The motion was seconded by Mr. Jerry Pender. Motion carried.

NFF Qualification Requirements Rule and Notice (Attachment 9)

The proposed change for this rule is under Section 905.2 and will provide consistency between language in the rule and that contained in the notice. The following phrase was added, "each NFF program participant will meet the standards set forth in the NFF qualification requirements as established by the Council and endorsed by the FBI's CJIS APB."

Compact Council Action: Ms. Lana Adams made a motion to publish the NFF Qualification Requirements Rule and Notice with one change, the removal of the word "final" from the sentence in the summary section of the notice which will now read, "The Council coordinated the development of the NFF Qualification Requirements with the FBI's CJIS Division staff and forwarded the final document to the CJIS APB for its endorsement prior to publication. The motion was seconded by Mr. Paul Heppner. Motion carried.

Mr. Campbell, DOJ, requested a further review of the NFF rule and notice.

Chairman Uzzell requested the FBI's Council staff to proceed with publication in the Federal Register if DOJ does not have substantive comments. The proposed rule and notice should be returned to the Council to consider any substantive comments.

Topic #16 Compact Council Web Site

Chairman Uzzell mentioned the testimony she made to a Congressional subcommittee regarding the Compact Act and the Council. While conducting research for the testimony, she discovered that the limited information available on the internet was outdated and of little value. In addition, Mr. Commodore explained that the issue of a Council World Wide Web (Web) site has been mentioned during previous meetings. There has been past interest from the Council and its members in establishing a Council Web site accessible by all Council members, those from both noncriminal and criminal justice agencies, as well as to the general public. This Web site could include the mission statement of the Council, the Council Bylaws, Council membership list, upcoming meeting information, topic papers, past meeting minutes, current initiatives, Council rules and notifications published in the Federal Register, and historic documentation.

Next, Mr. Commodore reviewed the options available for the Council to consider. The first option would provide a link on the www.fbi.gov Web site that would include Compact Council information. The www.fbi.gov Web site would allow access to personnel from noncriminal and criminal justice agencies, as well as the general public. LEO is another option, however, it would only be available to criminal justice agencies. The SEARCH Web site, www.search.org, is another option for the Council to consider. The final option would be for a state to volunteer as host of the Web site on behalf of the Council.

Mr. Commodore advised that initially time and resources would be expended in establishing a link at the

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Web site. The motion was seconded by Mr. Jerry Pender. Motion carried.

ADDITIONAL TOPICS

Update on the Rap Sheet Standardization

Mr. John Loverude, former Chairman of the Joint Task Force (JTF) on Rap Sheet Standardization provided an update on the Rap Sheet Standardization project (Attachment 10). Mr. Loverude explained that the objectives of the JTF were to develop a standardized criminal history transmission format, to develop a standardized presentation format, and to develop a concept of operations which combines criminal histories from multiple sources into a single criminal history rap sheet. Currently, three states and the FBI are participating in this program. Texas intends to implement the standardized rap sheet by the end of 2004 and several other states indicated they are preparing for it.

Mr. Loverude explained that the International Justice and Public Safety Information Sharing Network (NLETS) plans to conduct an Extensible Markup Language (XML) Implementers Conference to assist states and entities implementing the standardized rap sheet. The one day conference is tentatively planned for January 12, 2005. On January 13 and 14, 2005, NLETS will offer assistance with other XML - related implementations.

Compact Council Action: This topic was accepted as information only.

Submitting Name Checks via LEO

Ms. Debbie Chapman, CJIS Division staff, provided information regarding the name check process via LEO and a brief overview on improvements that have been made to the name check process. (Attachment 11)

In June 2004, additional information was added to the L0008 error message. This change provides a clear indication when candidates are found in IAFIS processing. If candidates were there but were not able to be identified or non-identified, the FBI wanted to return this information to the contributors so they would know that another fingerprint card was needed. A name check request form is now available on LEO, and is located under LEOSIG, PUBLIC SIG, CJIS, PROGRAMS, III and then On-Line Name search

Form. Responses are returned via LEO to the point of contact that is provided on the original request. Name check requests were previously only accepted via mail or fax.

Just under 4,000 name checks are done on an average month. Ninety-nine percent are completed on the day of the request and the Ident rate is 1.71 percent.

Compact Council Action: This topic was accepted as information only.

OTHER BUSINESS

Chairman Uzzell mentioned that the Executive Committee will consist of the chairs of the other Council committees which include Mr. David Sim, the Vice-chair of the Council and chair of the Dispute Adjudication Committee, Mr. Paul Heppner, chair of the Standards Committee, and Ms. Julie LeTourneau, chair of the Sanctions Committee. The Executive Committee will review the committee membership and update their member list to fill vacancies. Chairman Uzzell said that her goal is to fill committee openings with as many State Compact Officers as possible who do not sit on the Council.

The meeting was adjourned at 12:08 p.m.
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Web site. The motion was seconded by Mr. Jerry Pender. Motion carried.

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